

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

FRANK LEONARD PENNY,)	
)	
Petitioner,)	
)	
vs.)	No. 06-3374-CV-S-RED-H
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

Petitioner, an inmate confined at the United States Medical Center for Federal Prisoners, has petitioned this Court for a writ of habeas corpus. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner is entitled to no relief, it will be recommended that leave to proceed in forma pauperis be denied.

As grounds for relief in habeas corpus, the petitioner alleges that his good time credit has been improperly calculated. He asserts that the Bureau of Prisons' interpretation of 18 U.S.C. § 3624 (b) is unreasonable. The issues raised by petitioner have been decided by the United States Court of Appeals for the Eighth Circuit in *Bernitt v. Martinez*, 432 F.3D 868, 869 (8th Cir. 2005). It was decided that the Bureau of Prisons' interpretation of 18 U.S.C. § 3624(b) was reasonable and entitled to deference. It was further decided that the rule of lenity does not apply in those cases. In addition, petitioner has failed to exhaust administrative remedies.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted. ¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND, CHIEF
UNITED STATES MAGISTRATE JUDGE

Date: March 8, 2007

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.